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International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

International Residual Mechanism for Criminal Tribunals

Evaluation of the methods and work of the International Tribunal for the Former Yugoslavia

Report of the Office of Internal Oversight Services

Summary

The International Tribunal for the Former Yugoslavia was established by the Security Council in its resolution 827 (1993), in order to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1 January 1991, and thereby contribute to the restoration and maintenance of peace in the region.

In the present evaluation report, the Office of Internal Oversight Services (OIOS) assessed the relevance, effectiveness and efficiency of the methods and work of the Tribunal in implementing the completion strategy during the period 2010-2015, with a focus on the timely completion of judicial activities, staff retention and voluntary separations in the context of the downsizing process. OIOS relied on a wide range of qualitative and quantitative sources to support its analysis.

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Between 2010 and 2015, the Tribunal systematically reported on its performance and activities to the Security Council and the General Assembly, and made steady progress in monitoring its judicial activities. The Tribunal also implemented a number of operational and procedural reforms, and monitored them, in order to achieve the completion strategy. The Tribunal accomplished this in the context of implementing a downsizing exercise, during which it experienced a 53 per cent decrease in its overall workforce in the five-year temporal scope examined.

At the same time, evidence on demonstrating performance results proved elusive. While there were different perspectives on how to interpret the dates of the completion strategy, there was also an absence of clear indicators to enable a transparent assessment of the extent to which the completion of work was on track. Measures of effectiveness and efficiency were based largely on the past performance of the Tribunal itself, rather than in comparison with other international institutions or domestic courts. Results-based management frameworks were ambiguous. More importantly, there was a lack of evidence to demonstrate how the operational and procedural reforms rolled out over the years contributed to greater efficiency. The Tribunal does report on its performance and its progress on the completion strategy; it reports on the status of its activities rather than demonstrating results.

The four key recommendations of OIOS to the Tribunal are as follows:

(a) Adopt case process time standards based on different types of case management approaches and monitor progress towards those internal benchmarks;

(b) Ensure that planning and monitoring mechanisms are tracking efficiency results;

(c) Develop a code of conduct and disciplinary mechanism for judges;

(d) Develop a centralized information system on staff separations and improve human resources analysis for data-driven decision-making.

Contents

		Page
I.	Introduction	4
II.	Background	4
	A. History and mandate	4
	B. Structure and governance	5
	C. Resources	6
III.	Evaluation framework: scope, purpose and methodology	7
	A. Scope and purpose	7
	B. Methodology	8
IV.	Evaluation results	9
	A. The Tribunal has adequately developed the structures, mechanisms and operational activities to implement the completion strategy	9
	B. The Tribunal has been somewhat effective in planning and carrying out its case work	10
	C. The Tribunal introduced notable measures to expedite judicial activities in the context of the completion strategy, but evidence to demonstrate that it is working in the most efficient manner from 2010 to 2015 is weak, and there is inadequate accountability for the conduct of judges	16
	D. Voluntary separation, not downsizing, posed a major challenge to the timely completion of judicial activities	19
V.	Conclusion	24
VI.	Recommendations	25
Annexes		
I.	Comments received from the International Tribunal for the Former Yugoslavia	27
II.	Comments by the Office of Internal Oversight Services, Inspection and Evaluation Division	38

I. Introduction

1. The Inspection and Evaluation Division of the Office of Internal Oversight Services was mandated by the Security Council in resolution 2256 (2015) to conduct an evaluation of the methods and work of the International Tribunal for the Former Yugoslavia. The General Assembly endorsed the request in its resolution 70/227.

2. OIOS evaluations are undertaken pursuant to Article 97 of the Charter of the United Nations and General Assembly resolutions 48/218 B, 54/244 and 59/272, as well as Secretary-General's bulletin ST/SGB/273, according to which OIOS is authorized to initiate, carry out and report on any action that it considers necessary to fulfil its responsibilities. Evaluation by OIOS is provided for in the Regulations and Rules Governing Programme Planning, the Programme Aspects of the Budget, the Monitoring of Implementation and the Methods of Evaluation (ST/SGB/2000/8, regulation 7.1).

3. The overall objective of the evaluation was to determine as systematically and objectively as possible the relevance, efficiency and effectiveness of the methods and work of the Tribunal in implementing the completion strategy pursuant to Security Council resolution 1966 (2010), with a focus on the timely completion of judicial activities, and staff retention and voluntary separations in the context of the downsizing process (see para. 45 below). The scope and focus of the evaluation emerged from a preliminary desk review and scoping interviews of the residual challenges facing the Tribunal, as well as the truncated timeline. The evaluation was conducted in conformity with the norms and standards of the United Nations Evaluation Group.

4. The comments of the management of the Tribunal were sought on the draft report and were taken into account in the preparation of the present final report. The formal response of the Tribunal is included in the annex to the present report.

II. Background

A. History and mandate

5. The International Tribunal for the Former Yugoslavia is an ad hoc tribunal established by the Security Council in its resolution 827 (1993). It is mandated to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1 January 1991 and thereby contributes to the restoration and maintenance of peace in the region.[1] The Tribunal has jurisdiction over breaches of the Geneva Conventions, violations of the laws and customs of war, genocide and crimes against humanity.

6. The Tribunal is the first international tribunal created since the military tribunals in Nuremberg and Tokyo after the Second World War. Unlike prior tribunals established at the end of armed conflict, the International Tribunal for the

[1] See Security Council resolution 827 (1993). In accordance with article 8 of the statute of the International Tribunal for the Former Yugoslavia, the temporal jurisdiction of the Tribunal is open ended. The statute is available from www.icty.org/x/file/Legal%20Library/Statute/statute_sept09_en.pdf.

Former Yugoslavia was created by the United Nations during an ongoing war in Bosnia. The crimes alleged and tried by the Tribunal extend in time from 1991 (in Croatia) to 2001 (in Macedonia), and include crimes committed in the period 1992-1995 (in Bosnia and Herzegovina), 1995 (in Croatia) and in the period 1998-1999 (in Kosovo). Furthermore, it was the first tribunal established under Chapter VII of the Charter of the United Nations as a measure to maintain international peace and security. The Tribunal has indicted a total of 161 people.

7. In accordance with the purpose of its founding resolution, the objectives of the Tribunal are: (a) to bring to justice persons allegedly responsible for serious violations of international humanitarian law; (b) to render justice to victims; (c) to deter further crimes; and (d) to contribute to the restoration of peace by holding accountable persons responsible for serious violations of international humanitarian law.

8. In its resolutions 1503 (2003) and 1534 (2004), the Security Council endorsed the completion strategy presented by the President of the International Tribunal for the Former Yugoslavia in June 2002 (S/2002/678), according to which the investigations were envisioned to be completed by the end of 2004, all first-instance trial work by the end of 2008 and the appeals in 2010. Under the completion strategy, the Tribunal concentrated on the prosecution and trial of the most senior leaders while referring cases involving intermediate and lower-rank accused to national courts. In its resolution 1534 (2004), the Council also called upon the president and prosecutor of the Tribunal to explain their plans to implement the completion strategy in their semi-annual reports to the Council.

9. While endorsing the proposed completion strategy, the Security Council also noted that the implementation of the strategy was dependent upon external factors outside of the Tribunal's control. For example, in resolution 1503 (2003), the Council noted with concern that certain States were still not offering full cooperation and that the strengthening of national judicial systems was crucially important to the implementation of the completion strategies of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda. As early as 2004, the Council noted in its resolution 1534 (2004) that it might not be possible to implement the completion strategies set out in resolution 1503 (2003). In its resolution 1966 (2010), it noted that the envisaged dates mentioned above had not been met and requested the International Tribunal for the Former Yugoslavia to take all possible measures to expeditiously complete all its remaining work no later than 31 December 2014. With the final two fugitives arrested in May and July 2011, the International Tribunal for the Former Yugoslavia has continued to function past 2014. The Tribunal considers that the pending activities will be completed by the end of 2017.

B. Structure and governance

10. The highest authority of the International Tribunal for the Former Yugoslavia is the President, who is supported by a Vice-President. Both the President and Vice-President are elected from among the permanent Tribunal judges by majority vote.

11. The Tribunal consists of three organs. The Chambers represents the judicial organ that comprises judges. It is organized into three Trial Chambers and one Appeals Chamber. The Office of the Prosecutor is a separate and independent organ

of the Tribunal that has an Immediate Office, a Prosecutions Division and an Appeals Division. The Registry services both the Chambers and the Prosecution. As at 1 January 2016, it was further organized into a Registry Advisory Section, a Division of Judicial Support Services (which includes the Chambers Legal Support Section), an Administrative Division, a Communications Service, a Security and Safety Section, and a Conference and Language Services Section (see A/70/397, annex I).

12. The Tribunal is a subsidiary organ of the Security Council. While the Tribunal remains independent from the Council, the Council is ultimately accountable for the Tribunal's activities and its continued operations. The General Assembly, through the Fifth Committee, has budgetary control of the Tribunal.[2] Therefore, the Tribunal reports annually to the Security Council and the General Assembly, as well as semi-annually on the completion strategy. The Tribunal is also subject to oversight by OIOS, the Board of Auditors and the Joint Inspection Unit.

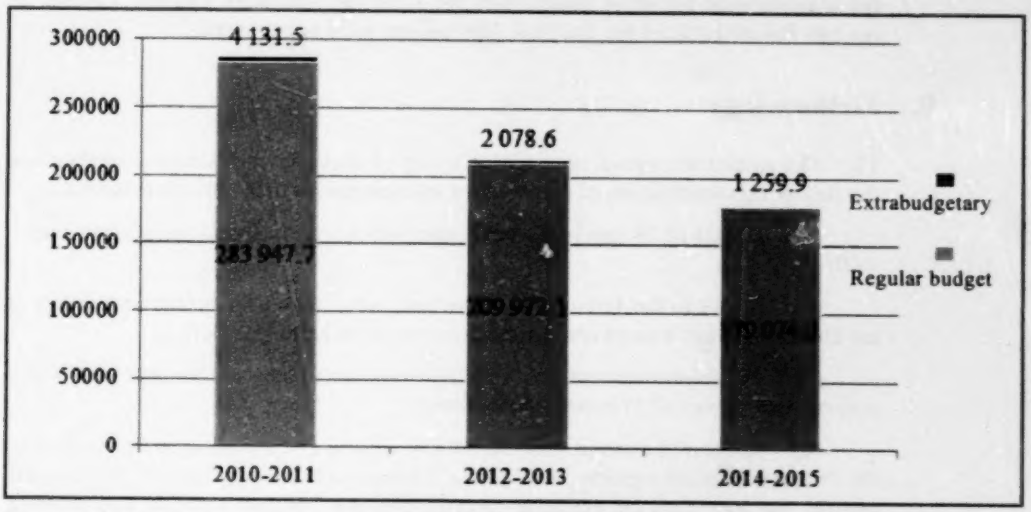
13. The Tribunal is located in The Hague, with field offices in Sarajevo and Belgrade.

C. Resources

14. The Tribunal is financed from assessed contributions in accordance with a hybrid scale of assessments. Half of the budget of the Tribunal is financed according to the regular budget and the other half according to the peacekeeping scale. It reports directly to the General Assembly through the Advisory Committee on Administrative and Budgetary Questions and the Fifth Committee.

[2] In accordance with article 32 of the statute of the International Tribunal for the Former Yugoslavia, which refers to Article 17 of the Charter of the United Nations.

Figure I
Financial resources of the International Tribunal for the Former Yugoslavia, 2010-2015[a]
(Thousands of United States dollars)



Source: See expenditure, net of staff assessment, in A/64/476, A/66/386, A/68/386, and A/70/397).

[a] For the biennium 2014-2015, the regular budget figures are based on the approved budget at the revised exchange rate. The extrabudgetary figures for the biennium 2014-2015 are estimates.

15. As indicated in figure I, the financial resources of the Tribunal have steadily decreased over the past three bienniums. The proposed resources of the Tribunal for the biennium 2016-2017 before recosting, and after adjustment for other income, amount to $113,429,500 (gross), reflecting a net decrease in real terms of $87,625,300 (or 43.6 per cent), compared with the biennium 2014-2015 resources (see A/70/397, table 2). The decrease reflects reductions under the Chambers ($2,420,700), the Office of the Prosecutor ($21,847,000) and the Registry ($63,463,100), owing mainly to the reduction in trial and appeal activity during the biennium 2016-2017. The final budget of the Tribunal is expected to be for the biennium 2016-2017.

III. Evaluation framework: scope, purpose and methodology

A. Scope and purpose

16. The present evaluation covers operational issues relating to the methods and work of the Tribunal, for the period 2010-2015, especially the timely completion of judicial activities, and staff retention and voluntary separations in the context of the downsizing process. Owing to the primacy of judicial independence,[3] the report does not cover substantive aspects of international criminal law (namely, legal reasoning, decision-making, jurisprudential regimes and decision outcomes). Owing to time constraints, the present evaluation focuses on the timely completion of

[3] Symbolizing procedural fairness and connoting a professional and unbiased decision-making process.

judicial activities, and voluntary separations and retention, two areas critical to the operational effectiveness and efficiency of the Tribunal in the context of the completion strategy. Therefore, the impact and legacy of the Tribunal, the work of the International Residual Mechanism for Criminal Tribunals and the transfer of records and archives to the Residual Mechanism were not covered.

B. Methodology

17. The results are based on a triangulation of multiple data sources. OIOS used the following combination of quantitative and qualitative data collection methods:

(a) A total of 39 semi-structured interviews with Tribunal judges and senior staff;

(b) A visit to the Tribunal headquarters, including observations undertaken at the Detention Unit, a court room simulation and a technology briefing;

(c) Web-based surveys of a stratified random sample of Tribunal staff and a non-random survey of Tribunal stakeholders;[4]

(d) Structured content analysis of key reports and documentation, including the Tribunal's annual reports, the Tribunal's completion strategy reports, OIOS audit reports, Security Council verbatim records, and the Tribunal's policy and meeting documents;

(e) External literature review of scholarly and policy articles on the operation and function of the Tribunal;[5]

(f) Appeals case load analysis;

(g) Quantitative analysis of duration on trial and appeal proceedings, rendering of judgments, a multivariate index measure of complexity [6] and a regression analysis of first-instance trials and appeal duration and complexity;

(h) Quantitative analysis of staff separations, turnover ratio and rate of voluntary separations.

18. Key limitations included the late arrival of primary data from the International Criminal Tribunal for Rwanda to enable a robust case study to compare the latter to the International Tribunal for the Former Yugoslavia. Ultimately, the short duration of two months for undertaking design, data collection, analysis and report drafting constituted a limiting factor for the evaluation.

19. OIOS consulted the International Tribunal for the Former Yugoslavia during the conduct of the evaluation and expresses its appreciation to the Tribunal for its

[4] A total of 197 responded to the staff survey — a response rate of 66 per cent. A total of 49 responded to the stakeholder survey — a response rate of 40 per cent.

[5] A total of 50 sources were systematically reviewed for inclusion or exclusion, of which 27 were included on the basis of relevance and/or quality.

[6] The complexity index was developed with information provided by the Head of Chambers and Legal Team Leaders. Factual complexity denotes when facts necessary to decide the case are voluminous, technical, contradictory or incompatible. Legal complexity denotes when law is difficult to ascertain and existing precedents are inconsistent. The definitions were adopted from Stuart Ford, "Complexity and efficiency at International Criminal Courts", *Emory International Law Review*, vol. 29 (2014).

cooperation and assistance. The response of the Tribunal to the report is contained in annex I.

IV. Evaluation results

A. The Tribunal has adequately developed the structures, mechanisms and operational activities to implement the completion strategy

20. The Tribunal has submitted reports on the completion strategy at six-month intervals, with the President and the Prosecutor appearing before the Security Council every six months to detail the progress made, as mandated in paragraph 6 of Council resolution 1534 (2004). The first report of the Tribunal was submitted on 24 May 2004. In addition, the Tribunal has submitted annual reports to the Council.

21. On the basis of interviews, policy documents and the reports on the completion strategy reports, the majority of substantive operational and procedural reforms that formed a strategy to complete the judicial workload in an expeditious manner were initiated before 2010 to implement the completion strategy. A Trial and Appeal Scheduling Working Group, chaired by the Vice-President of the Tribunal, was established in 2005 to manage the progress of trials and appeals and to provide information that serves as the basis for the budget presentation. To expedite judicial activities, the Tribunal adopted the seniority requirement for prosecution[7] and the referral of cases against minor defendants to national jurisdictions so that trial activities could be completed by the end of 2008. Ad litem judges were added to the Tribunal to expand the capacity of the Tribunal and expedite the completion of cases. Ad litem judges were assigned to contempt cases in order to enable an equitable distribution of workload among judges.

22. The Tribunal also rebuilt courtrooms to accommodate multiple-accused cases. The roll-out of the electronic courtroom management system, eCourt, saved evidence presentation time in court, facilitated the search of evidence and decreased the reliance on paper records. An Office of Document Management was created to analyse and manage translation requests and to keep track of the percentage completed. The eDisclosure system permitted the streamlined disclosure of large volumes of documents from prosecution to defence. The system allows for an equal level of search capacity to promote procedural fairness. A concerted effort was made to decrease the scope, complexity and number of trials, including increased applications for joinder of cases and charges, the provision of a system of plea bargaining, reducing the scope and complexity of indictments, using agreed and adjudicated facts, admitting written evidence, enforcing time limits on parties and discouraging duplicative evidence.

23. In 2007, the split sitting times permitted a maximization of courtroom usage over two shifts daily, which exceeded normal working hours (see A/64/476, para. 35). This innovation allowed the Tribunal to increase its capacity to six concurrent daily trials, involving up to 28 accused from 9 a.m. to 7 p.m. A seventh trial simultaneously ran in 2007 and during the first two quarters of 2012, further maximizing the use of courtroom time. In 2014, the Division of Judicial Support

[7] See Security Council resolutions 1329 (2000), 1503 (2003) and 1534 (2004).

Services in the Registry underwent restructuring so that three sections were merged and assigned to a newly established section with the intention of achieving optimal use of reduced resources. The President of the Tribunal also meets with judges and team leaders of drafting teams for briefings on obstacles to expeditious drafting. The Conference and Language Services Section applied a flexible approach of in-house and outsourced resources to fulfil its translation obligations. Throughout the introduction of these measures, the Trial and Appeal Scheduling Working Group continued to monitor and manage progress of trials and appeals.

24. With regard to staffing, the Tribunal implemented training programmes for legal drafters in Chambers, altered preparations for drafting judgments to begin at an earlier stage of the trials and appeals, assigned additional staff members to multiple cases, assigned additional resources to translation, especially those that might have an effect on the progress of the judicial proceedings, and assigned staff members to assist on a part-time basis to cases potentially subject to delay. The Tribunal maintains a roster of applicants to ensure that departing staff can be replaced promptly. Accused persons were medically monitored on a regular basis in order to allow for updated information on their condition. Registry staff were trained to develop multifunctionality with regard to all aspects of the trials and appeals in order to allay delays. The Office of Human Resources Management permitted a waiver to hire qualified interns directly after the termination of their internships, without the need for them to wait the customary six months.

B. The Tribunal has been somewhat effective in planning and carrying out its case work

Despite the divergence of perspectives on the question of deadline versus targets, the dates of the completion strategy enabled the Tribunal to focus on completing its work

25. The dates set in the completion strategy were decided in dialogues held between the leadership of the Tribunal and the Security Council. The first establishment of dates for the completion of work was proposed by the Tribunal to the Council in its June 2002 report on the judicial status of the International Tribunal for the Former Yugoslavia and the prospects for referring certain cases to national courts (S/2002/678, annex). The Tribunal forecasts were based on estimates made by the Prosecutor in 1999 at the time of the issuance of the report of the Expert Group to Conduct a Review of the Effective Operation and Functioning of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda (A/54/634, annex). The Security Council responded to the proposed broad strategy with a presidential statement adopted in July 2002 (S/PRST/2002/21), and subsequently endorsed the proposed dates of completion in its resolution 1503 (2003), in which it recalled and reaffirmed the presidential statement and called upon the Tribunal to complete its work by 2010. None of the relevant Security Council resolutions on the Tribunal refer to the dates of the completion strategy as deadlines or targets explicitly.[8]

[8] See Security Council resolutions 808 (1993), 1503 (2003), 1534 (2004), 1931 (2010), 1966 (2010), 1993 (2011) and 2081 (2012).

26. On the basis of interviews, senior management of the Tribunal generally perceived that the approach underlying the completion strategy should be qualified by, and conditional upon, the requirements of the judicial process, [9] whereas members of the Security Council Informal Working Group on International Tribunals held diverse perspectives on whether the dates in the completion strategy represented flexible targets or fixed deadlines. In limited instances, the Tribunal used the phrase "deadline accepted under the completion strategy" when referring to the obligation of the Prosecution to ensure that all indictments were issued by the end of 2004. [10] Regardless of how the dates in the completion strategy were interpreted, they made the Tribunal more focused on completing its work.

27. It should be noted that the measures of effectiveness and efficiency by which the Tribunal is assessed are largely derived from past performance of the Tribunal itself, rather than in comparison to other international institutions or domestic courts where the cases and procedures may not be entirely equivalent. Comparative studies by scholars are nascent and do not adequately reflect the full complexity of the cases or the appropriate selection of comparators. [11] There were no available established benchmarks or an accepted methodology for the assessment of efficiency and effectiveness, which has led to different interpretations of the Tribunal's effectiveness and efficiency and whether activities are completed on time. An OIOS audit undertaken in 2004 of the Office of the Prosecutor at the International Criminal Tribunal for Rwanda and at the International Tribunal for the Former Yugoslavia concluded that there was insufficient evidence to confirm that the investigation and prosecution mandates of the Office of the Prosecutor would be completed by 2004 and 2008 respectively (A/58/677). The Tribunal maintained, however, that the target date of 2004 was realistic, and this deadline was eventually achieved (ibid., para. 10 (a)).

The Tribunal has been diligent in monitoring progress towards its judicial objectives

28. The Tribunal caseload encompassed 12 first-instance trials and 13 appeals between January 2010 and December 2015. During the same temporal scope, judgments were rendered in 8 first-instance trials and 10 appeals. In one instance, the Appeal Chambers terminated proceedings following the death of the appellant. As of December 2015, four first-instance trials and two appeals were still pending. The completion of two additional trial cases in March 2016 meant that two first-instance trials and two appeals were ongoing, involving a total of 10 accused. As of April 2016, proceedings against 151 of the indicted were concluded. The arrests of the two fugitives in 2011 demonstrated that all accused for whom indictments had been issued had either surrendered or been apprehended.

[9] See also Fausto Pocar, "Completion or continuation strategy? Appraising problems and possible developments in building the legacy of the International Tribunal for the former Yugoslavia", *Journal of International Criminal Justice*, vol. 6, No. 4 (2008).

[10] See www.icty.org/en/cases/transfer-cases. See also S/2005/343, annex II, paras. 29 and 30.

[11] Liliana A Barria and Steven D. Roper, "How effective are international criminal tribunals? An analysis of the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda", *The International Journal of Human Rights*, vol. 9, No. 3 (2005): 349-368; Ford, "Complexity and efficiency" (see footnote 6); Stuart Ford, "How much money does the International Criminal Court need?" in *The Law and Practice of the International Criminal Court*, Carsten Stahn, ed. (Oxford, Oxford University Press, 2015).

29. During the period 2010-2015, the Tribunal has been relatively timely in the completion of first-instance trials when viewed in terms of the fulfilment of the Tribunal's own projections. This has been the situation with the exception of one outlier case (see figure II). One of the primary tools for determining resource requirements and monitoring the progress towards timely completion of judicial activity was the schedules of trial and appeal cases. On-time case processing was defined in this instance as fully implementing the remaining trial and appeal stages according to the forecasts produced as of, respectively, the close of hearing and the filing of the last reply brief according to the schedule of the Trial and Appeal Scheduling Working Group. The schedule is a living document, produced at the pretrial phase and revised monthly on the basis of the ongoing events of the case. In general, the earliest available expected duration of a trial was indicated in the Tribunal's annual reports and its reports on the completion strategy. Therefore, the notion of trial slippage was derived from comparing the difference between the estimated and the actual duration of trial, relative to the targets set in the completion strategy. The earliest available forecast was used as a benchmark, but it was always the least accurate because it was made not only with the least amount of information but also with the highest degree of uncertainty. There was also an element of providing the most optimistic forecasts in response to the completion strategy (see S/2010/270, annex I, para. 87).

30. A number of external challenges beyond the control of the Tribunal affected the trial duration at various stages and were well documented in the annual reports of the Tribunal and its reports on the completion strategy reports. Such factors included, but were not limited to, the cooperation of States, the accused at large, self-represented accused, the health of the accused, the death of an accused, the death of lead defence counsel, the intimidation of witnesses and failure for witnesses to appear. When the prediction of the expected trial duration was taken at a more advanced stage of the judicial procedure,[12] however, the distance between the expected and actual trial duration was relatively nominal. For first-instance trials, this was due to the fact that once the defence and prosecution cases were completed the information available permitted a more accurate and reasonable prediction of the overall trial duration. For appeals, once a case was considered to be fully briefed, there was sufficient information to provide a reliable case timeline. Therefore, the Tribunal was able to provide a relatively reliable forecast for trial and appeal duration when taken at a more advanced judicial stage when there was less uncertainty about the progress of the judicial process.

31. The predictive power of forecasts at the close of hearing was strong.[13] When the outlier case (i.e., *Šešelj*) was omitted from the dataset contained in figure II below, there was less variation between the forecasted and actual duration. Case complexity played a role in the overall trial length. There was also a strong positive relationship between complexity and trial length when the outlier case was removed.[14] Therefore, 92 per cent of the variation in trial length could be attributed to complexity.[15]

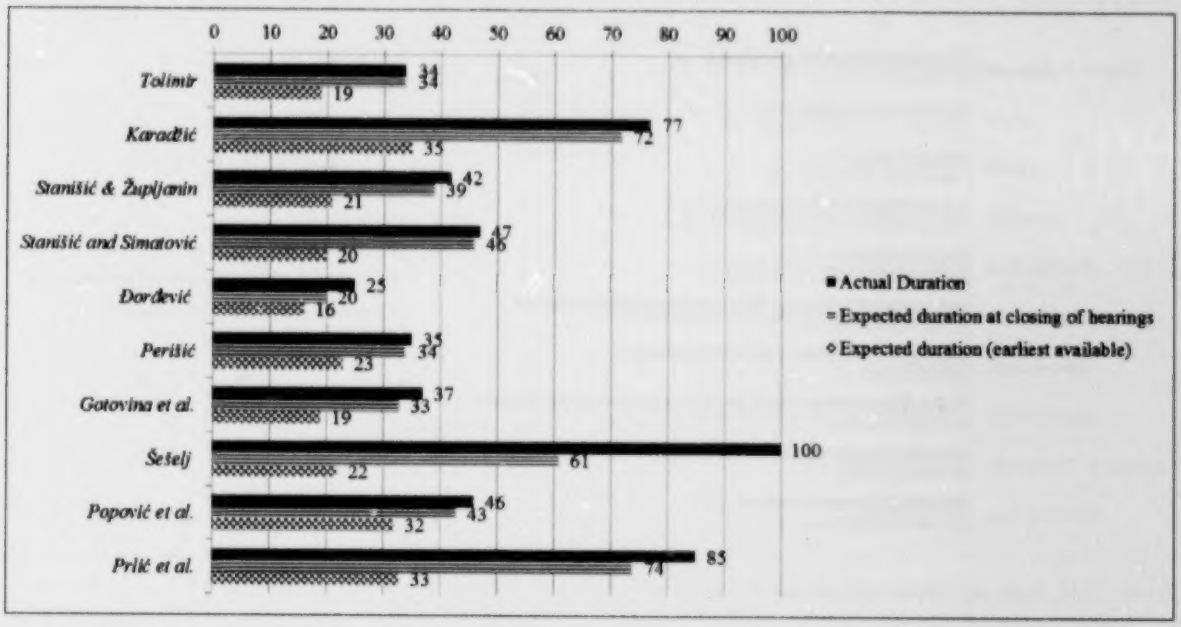
[12] Defined as the time directly after the closing of hearings.

[13] The root mean square error was 13.5 in trial cases.

[14] When the *Šešelj* case was removed, the correlation coefficient was 0.96, as opposed to 0.66.

[15] 92 per cent was derived from 0.96 squared (R^2).

Figure II
Timeliness of first-instance trials in terms of number of months, 2010-2015

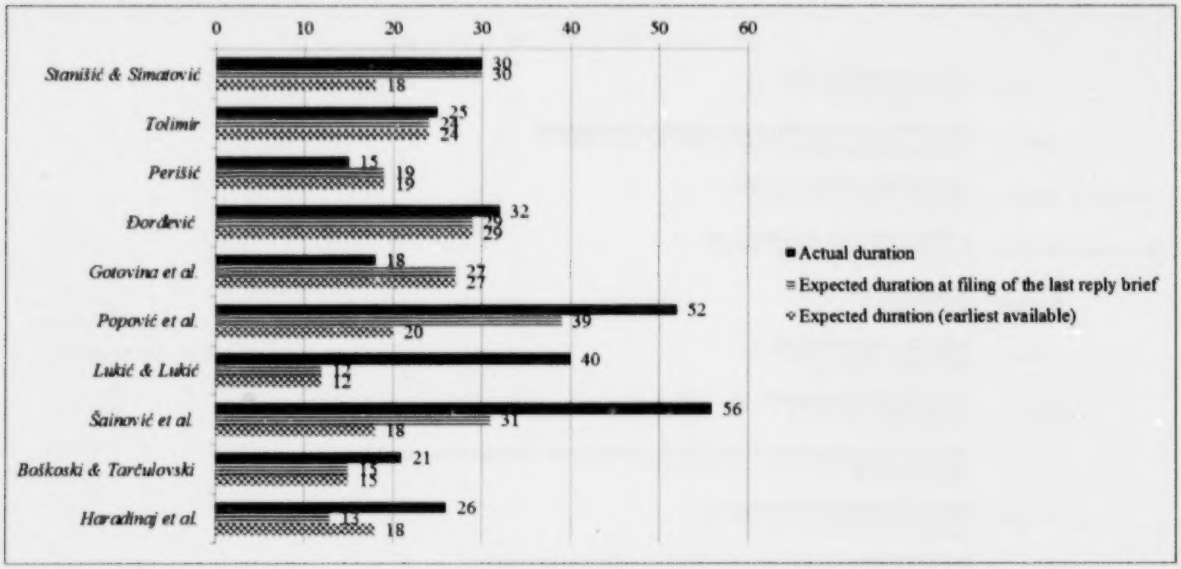


Source: OIOS, based on Tribunal trial and appeal schedules.

32. The timely completion of appeals cases was more idiosyncratic, compared with the first-instance trials (see figure III). There was a strong positive relationship between appeal case complexity and case length. When the two outlier cases, *Lukić and Lukić* and *Šainović et al.*, were omitted, there was a notable gain in predictive power of the forecast. In two cases, the appeals finished earlier than the expected duration for the earliest available projection and for predictions after the close of hearing. In the outliers, the increased workload of the presiding judges did not contribute directly to the delays. The difference between the forecasted and actual duration in the appeals forecast was similar to the trials dataset set out above, but slightly higher.[16] This means that the predictive power of the appeals forecast was slightly weaker than the trials forecast.

[16] The root mean square error was 13.8 for appeal cases.

Figure III
Timeliness of appeals cases in terms of months, 2010-2015



Source: OIOS, based on Tribunal trial and appeal schedules.

Demonstrating results according to a results-based management framework was ambiguous

33. Despite the progress towards achieving judicial objectives, the Tribunal did not provide sufficient evidence to demonstrate results on increased efficiency. Even with the regulatory framework consisting of the rules of procedure and evidence, practice directions and policy documents, there was no clear indication if procedural steps were shortened as discussed in paragraph 36 below. Moreover, on the basis of a desk review of the logical frameworks in budget documents and workplans for the period 2010-2015, the Office of the Prosecutor and the Registry did not identify clear and measurable objectives, select attributable indicators to assess progress towards the completion of judicial activity in the implementation of the completion strategy or set explicit targets for each indicator to enable judgment of performance, while acknowledging that expected accomplishments and outputs were drafted broadly. For example, in the Registry's logical framework, an entire set of indistinct activities was consolidated into a single line item, namely, the "Timely implementation of formal actions taken in accordance with the agreed-upon completion strategy" (see figure IV). The related indicator of achievement, "Percentage of actions completed on time" was ambiguous. While the first Tribunal logical framework was developed in 2004 with support from United Nations Headquarters (see A/65/5/Add.12, para. 34), the formulation of logical frameworks for the Office of the Prosecutor and the Registry have stayed the same over the course of three bienniums (see A/64/476, A/66/386 and A/68/386). The first refinement of the logical framework for the Registry appeared only in the report on the biennium 2016-2017 with the adoption of a measureable indicator, namely,

"Percentage of cases completed by the end of the biennium".[17] In addition, the logical framework for the Office of the Prosecutor did not update the correct number of first-instance trials in the biennium 2016-2017.[18]

Figure IV
Logical framework for the Registry for the biennium 2010-2011

Table 8
Objectives for the biennium, expected accomplishments and indicators of achievement

Objective: The efficient administration and servicing of the Tribunal by the management of judicial, administrative and legal support to Chambers, the Office of the Prosecutor and, in a limited fashion, the defence, in line with the statute of the Tribunal, the Rules of Procedure and Evidence, United Nations regulations and rules and the Tribunal's completion strategy	
Expected accomplishments	**Indicators of achievement**
(a) Timely implementation of formal actions taken in accordance with the agreed-upon completion strategy	(a) Percentage of actions completed on time *Performance measures*: 2006-2007: 95 per cent Estimate 2008-2009: 95 per cent Target 2010-2011: 95 per cent

Source: A/64/476.

34. Ambiguously formulated overall goals and indicators translated into equally ambiguous division workplans, which did not support adequate performance monitoring. A review of a selection of annual division workplans in the Registry for the period 2010-2015 indicated that a number of key elements necessary for planning and performance monitoring were missing, particularly in the workplans for the period 2010-2013. There was no specification of performance indicators, timelines or necessary resources required to achieve the goals. These workplans did not lend themselves adequately to enabling managers to ensure that activities contributed to the overall priorities of the Tribunal. From 2010 to 2013, expectations that overall organizational goals and accomplishments would cascade down to divisions in a meaningful manner were limited. It was only in the 2014-2015 performance cycle that the division workplans began to follow a results-based management approach. Unsurprisingly, the budget report for the biennium 2016-2017, which was prepared in 2015, shows a clearer attribution of outputs towards overall objectives.

[17] Although the budget report for the biennium 2016-2017 (A/70/397) falls outside the temporal mandate of the present evaluation, it was drafted in 2015.

[18] The budget report for the biennium 2016-2017 (A/70/397) still reflected, under table 7, indicators of achievement (a), six first-instance trials completed in the biennium 2012-2013, even though the actual number completed was four. See A/66/386, table 5, indicators of achievement (a) for the biennium 2012-2013; A/68/386, table 7, indicators of achievement (a) for the biennium 2012-2013; and A/70/397, table 7, indicators of achievement (a) for the biennium 2012-2013.

C. The Tribunal introduced notable measures to expedite judicial activities in the context of the completion strategy, but evidence to demonstrate that it is working in the most efficient manner from 2010 to 2015 is weak, and there is inadequate accountability for the conduct of judges

Impetus to expedite judicial activities produced uncertain effects

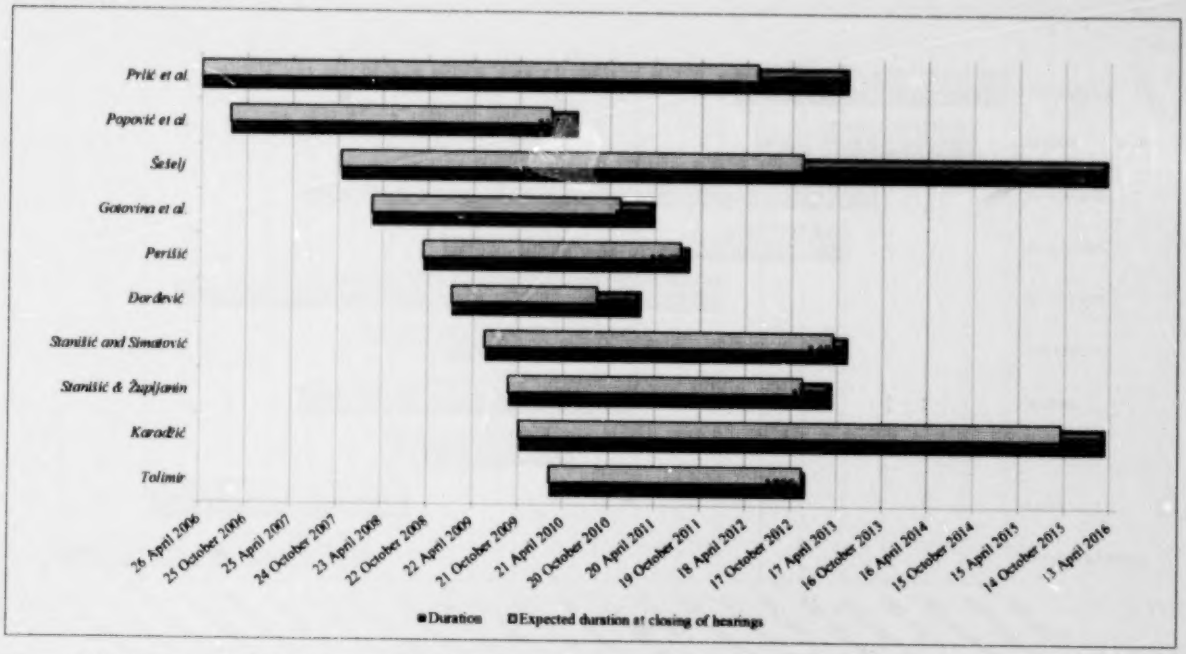
35. The impetus to increase efficiencies and maximize resources multiplied in the Tribunal after the publication of the 1999 report of the Expert Group to Conduct a Review of the Effective Operation and Functioning of the International Tribunal for the Former Yugoslavia and the International Tribunal for Rwanda (see A/54/634, annex). For the present evaluation, there was insufficient evidence to definitively conclude that earlier reforms or reforms implemented after 2010 to streamline or improve the pace of the Tribunal's work contributed significantly to expeditious trials and appeals.[19] The reforms were never systematically assessed to ensure that the desired effects were produced, unintended consequences were mitigated or precisely how much time was saved. Earlier suggestions to foster documentation on efficiencies were ignored by the Tribunal, as was the case when OIOS recommended in a 2008 audit (AA2008/270/01) the implementation of an effective information management system to collate critical performance measures systematically owing to the inability to assess the impact of efficiency measures and multi-accused trial on reducing the duration of cases.

36. Approximately 85 per cent of the judges and senior staff interviewed were unclear if the operational and procedural efficiencies introduced had produced the desired effects over time. Forty-one per cent of surveyed staff believed that the work of the Tribunal had not been affected by any efficiency gains or losses between 2010 and 2015, compared with 10 per cent who reported efficiency gains. Of the 10 per cent, most provided anecdotal accounts of how measures to expedite judicial activities might have contributed to time saved in their cases, but also contributed to lags in other parts of the judicial process.

37. The average duration of resolved trials in the biennium 2010-2011 was 1,086 days; in the biennium 2012-2013 it increased to 1,588 days, attributable mainly to the length of the complex multi-accused cases such as *Prlić et al.* No first-instance trial was completed in the past biennium (see figure V). The average duration for drafting a judgment is 411 days, with a median of 240 days.

[19] Even in 1999, the Expert Group remained unconvinced that adopting all of their recommendations, as well as one proposed by the Tribunal itself, would lead to dramatic improvements in the duration of pretrial, trial and appeal proceedings (see A/54/634, para. 262). Some claim that the substantive reforms increased pretrial and trial length. See also Máximo Langer and Joseph W. Doherty, "Managerial judging goes international, but its promise remains unfulfilled: an empirical assessment of International Tribunal for the Former Yugoslavia reforms", *Yale Journal of International Law*, vol. 36 (2011).

Figure V
Duration of trials, 2010-2015

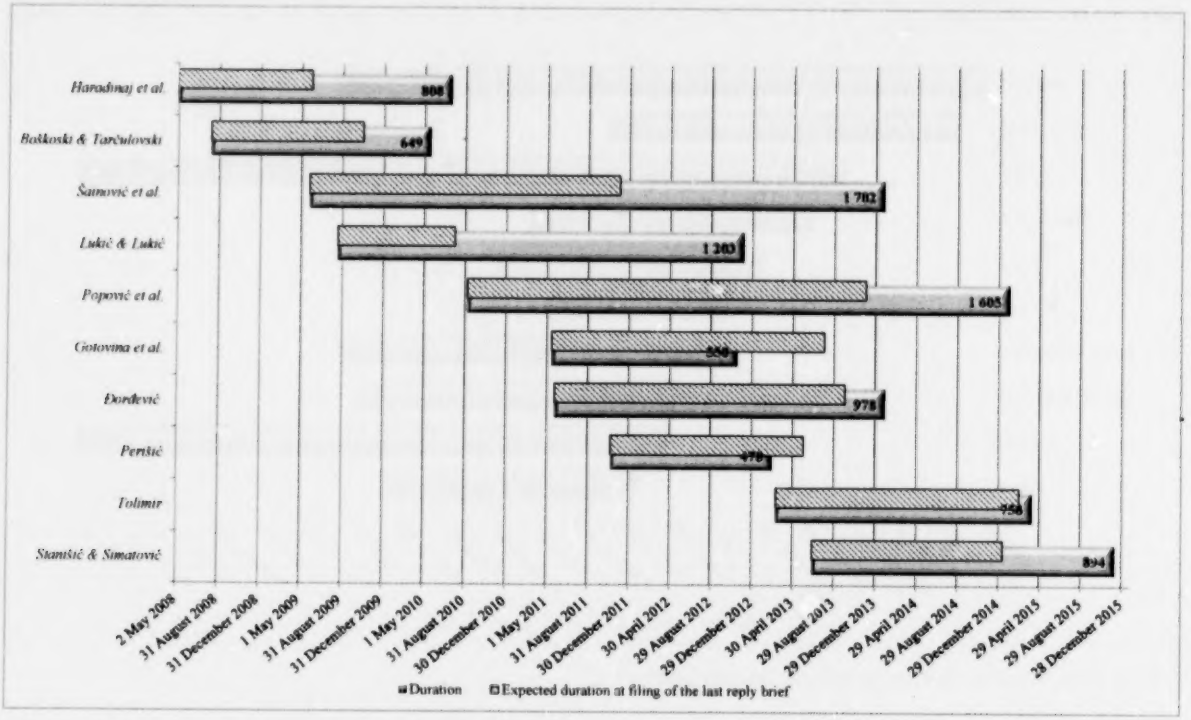


Source: OIOS, based on the Tribunal trial and appeals schedules.

38. With regard to trial activity, four first-instance trials were completed in the first two bienniums, and none were completed in the past biennium. As at March 2016, two cases were completed, two trials were pending, and there were no incoming cases.

39. The average duration for resolved appeal cases was 728.5 days for the biennium 2010-2011, 744 for the biennium 2012-2013 and approximately 1,187.4 days for the biennium 2014-2015. The increase in the average appeal length was attributable mainly to the extended timeline of multi-accused trial cases like *Popović et al.* and *Šainović et al.* (see figure VI). In the period 2010-2015, the completion rate for appeal cases steadily increased.

Figure VI
Duration of appeals, 2010-2015



Source: OIOS, based on the Tribunal Trial and Appeals Schedules.

40. The 2009 Manual on Developed Practices, prepared by the Tribunal and the United Nations Interregional Crime and Justice Research Institute, provides a general frame of reference on how long prosecution, legal support teams and judges should devote to judicial proceedings, and on the rendering of judicial decisions based on prior cases. Systematic monitoring is performed by the President of the Tribunal, the Trial and Appeal Scheduling Working Group, and meetings between the President of the Tribunal, the Head of Chambers and senior staff; however, only the Working Group schedules are publically available. The Tribunal does not appear to collect information that facilitates the examination of case processing practices or consensus on meaningful time standards to benchmark the progress of different cases, let alone against other ad hoc tribunals.

A clear code of conduct and disciplinary mechanism for judges is absent at the Tribunal

41. The Tribunal does not have a code of conduct or formal mechanism in place for judges to safeguard the proper adherence to judicial conduct and ethics, unlike what has been developed for prosecution and defence counsel. Tribunal judges are non-staff officials of the United Nations, given the need for impartiality and judicial independence. There is no clear disciplinary or oversight regime governing the professional conduct of judges at the Tribunal. None of the statutes or the Charter of

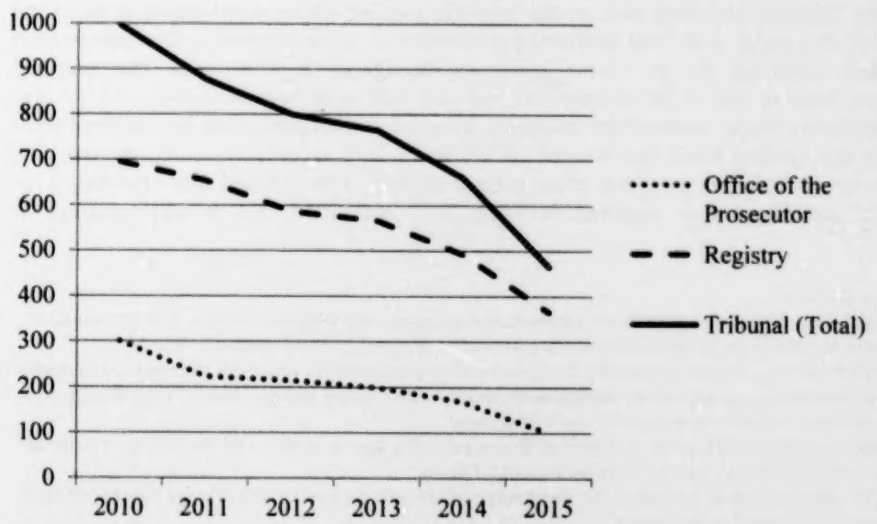
the United Nations contains provisions to that effect, let alone guidance on disciplinary measures should Tribunal staff seek recourse to resolve internal conflicts against a judge. In limited instances, this gap has contributed to delays in judicial activities, especially when one or more experienced staff leave as a result of harassment or are reassigned to other cases to resolve the internal conflict. For the Tribunal, succeeding ad hoc tribunals and the International Residual Mechanism for Criminal Tribunals may consider creating an independent body such as a judicial inspector general which would deal with issues of misconduct and incapacity, as well as audit the methods and work of judges. Alternatively, the creation of a disputes mechanism body would help to ensure a harmonious work environment between staff and judges.

D. Voluntary separation, not downsizing, posed a major challenge to the timely completion of judicial activities

The Tribunal ensured procedural fairness and transparency in the downsizing exercise

42. Adequate staffing plays a crucial role in whether the Tribunal can meet its judicial objectives to implement the completion strategy, especially in the context of downsizing. The Tribunal experienced a 53 per cent decrease in its overall workforce between 2010 and 2015 (see figure VII).

Figure VII
Active workforce of the Tribunal, 2010-2015[a]



Source: OIOS, analysis of Tribunal human resources staffing tables.
[a] Active workforce denotes the average number of active staff during the year.

43. The downsizing process consisted of an analysis of the operational needs of each section on the basis of the trial and appeal schedules, and the development of a budget for each upcoming biennium. Section chiefs determined whether posts

performed a unique function, a discreet function or an interchangeable function, where the latter category was subject to a comparative review.[20] The Tribunal diligently assessed the criteria of the downsizing process through the Joint Negotiation Committee[21] and the Downsizing and Comparative Review Board. In a 2010 audit report, OIOS found the downsizing of the Tribunal to be a best practice in the leadership of a change process.[22] Nevertheless, the Tribunal did not monitor or assess the impact of the downsizing.

Limited analysis capabilities hindered the Tribunal from fully understanding the relationship between voluntary separations and downsizing

44. Analysing turnover rates[23] is critical to a downsizing organization. It enables an organization to gain a systematic picture of the impact of separations relative to the size and composition of the workforce over time; determine the extent to which downsizing, voluntary separations or other types of separations contribute to overall turnover; identify whether changes in staff turnover are merely random fluctuations or determine a trend; determine the extent to which downsizing is adjusted to compensate for changes in voluntary separations; and identify what divisions and units suffer from the most dramatic capacity losses relative to workforce fluctuations. However, staff turnover rates are difficult to interpret without considering past, present and future trends.

45. Staff turnover rates were only analysed between 2006 and 2008 in conjunction with a comprehensive proposal on appropriate monetary incentives to retain staff.[24] The Tribunal lacked the overall capacity to thoroughly assess and monitor the staff turnover rate because the human resources management system did not have a functionality to generate data from the past on the active workforce.[25] Upon request, the Tribunal provided data on the monthly staffing tables downloaded towards the end of a given year, thus delivering a snapshot as of November or December rather than capturing the workforce dynamics throughout a given year. The snapshot consisted of over 4,000 entries, and not only had to be manually produced but also had to be cross-validated for accuracy. It included the count of all encumbered posts in the staffing table and needed to be normalized in order to calculate the staff turnover statistics provided in the present section. The Tribunal also provided a list of separations that occurred between 2010 and 2015, but it was missing the

[20] Such a process took into account performance, integrity and length of service. It is the method used to inform decisions on downsizing for staff performing interchangeable functions.

[21] The Joint Negotiation Committee comprises four representatives and eight alternates, with equal representation, nominated by management and the Staff Union and appointed by the Registrar, in addition to a chair nominated by the Committee.

[22] See AA2010/270/04, para. 11 (internal document). The text is on file with the Office of Internal Oversight Services and is available for consultation.

[23] The turnover rate is defined as the percentage of separations against the average number of staff active in a specific time period.

[24] The staff turnover estimates were calculated by the Secretary-General. See A/61/522, A/61/824 and A/62/681.

[25] Given the reliance on raw primary data on workforce composition, separations and vacancies provided by the Tribunal, some margin of error in calculating turnover ratios is expected. Also, the enterprise resource planning system (Umoja) was rolled out on 9 November 2015 at the Tribunal. Therefore, comprehensive data on the active workforce was only available for the end of 2015.

comparative ratio to the active staff population necessary to express the true scale of staff turnover.

46. Staff turnover comprises both voluntary and involuntary separations. The latter refers to a broad category of separations deliberately pursued by a given organization, and includes expiry of appointment, expiry of appointment (downsizing), temporary to fixed-term appointment, and terminations. Voluntary separations, however, are initiated by staff, such as retirements and early retirements, resignations and transfers, as well as health- and death-related separations (unforeseen by the organization). The term "downsizing" in the present report is defined as separations that are explicitly labelled as either terminations or "expiry of appointment (downsizing)". Separations due to downsizing represent only a subset of the broader involuntary separations category.

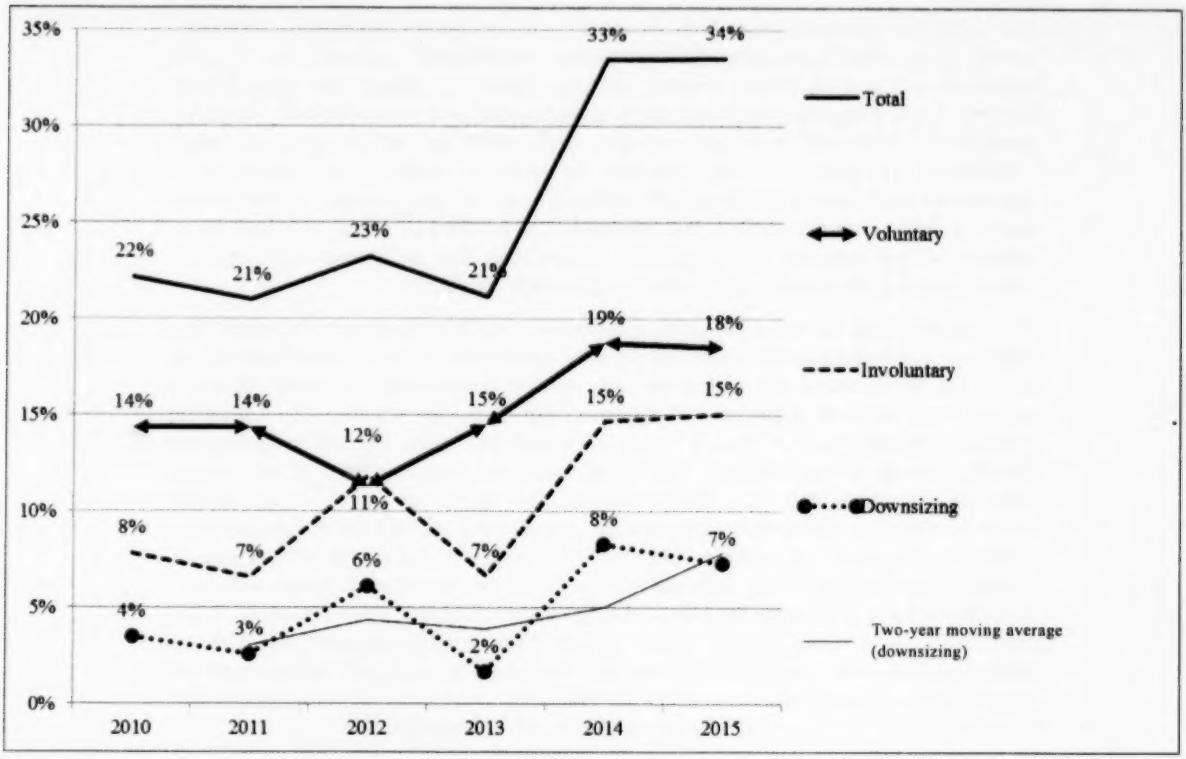
47. In analysing the turnover rates, it becomes possible to support the claim that voluntary separations challenged operational continuity far more than downsizing. While the two concepts are related because staff leave voluntarily in search of stable employment when an organization is downsizing, it is also not the only reason for voluntary separations. In fact, between 2010 and 2015, the analysis demonstrates that the average downsizing rate was 4.9 per cent, less than one third of the average voluntary turnover rate (15.3 per cent), and less than one fourth of the overall turnover rate. As such, the incidence of downsizing on the total turnover was relatively marginal. In addition, downsizing was not the main contributor to voluntary separations. Only less than 30 per cent of any change in the voluntary separation rate can be explained by a change in downsizing.[26] The remaining 70 per cent could be associated with other factors. This finding supports the need to understand the other important factors that contribute to voluntary separations and the degree to which human resources management style and practices can mitigate the relationship between downsizing and voluntary separations.[27]

48. The turnover dynamics in 2012 demonstrated that other factors can mitigate the effects of downsizing on voluntary separations. Although no post reductions were proposed for the biennium 2012-2013 (see A/66/386), the Tribunal downsized at higher than average rates in 2012. The surge was not accompanied by an increase in voluntary separations. Instead, the voluntary separation rate reached a five-year low in 2012 (see figure VIII). The data provided did not lend itself to a clear explanation of other contributing factors or to how management response might have strengthened staff retention. However, analysing the trends and relationship between voluntary and involuntary separation rates would enable the Tribunal to make adjustments accordingly.

[26] The analysis yielded a correlation coefficient of 0.54.

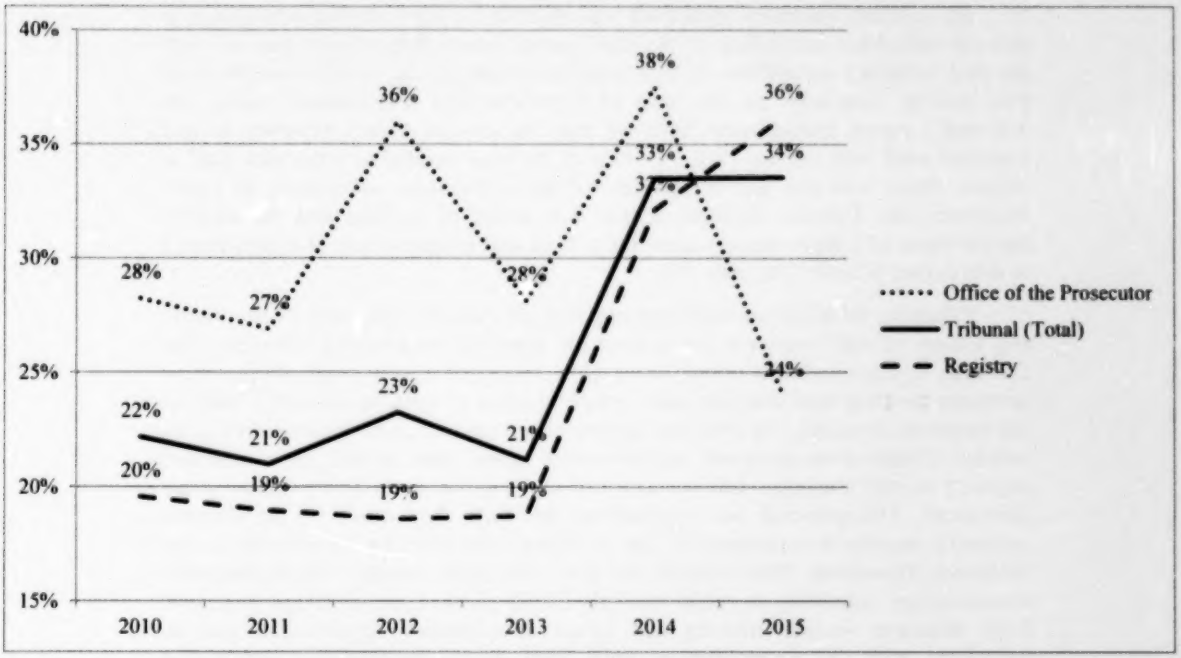
[27] See Charlie O. Trevor and Anthony J. Nyberg, "Keeping your headcount when all about you are losing theirs: downsizing, voluntary turnover rates, and the moderating role of HR practices", *Academy of Management Journal*, vol. 51, No. 2 (2008).

Figure VIII
Turnover at the Tribunal, 2010-2015



Source: OIOS, analysis of the Tribunal human resources staffing tables.

Figure IX
Turnover rates of the Office of the Prosecutor, the Registry and the Tribunal, 2010-2015



Source: OIOS, analysis of the Tribunal human resources staffing tables.

49. As turnover rates vary, interpreting turnover data requires careful consideration of the context. Figures VIII and IX indicate the turnover rates of the Tribunal over time and enable the tracking of trends. Granular data on different divisions and units can provide further useful information on whether turnover is increasing overall, among particular groups or in certain units. On the basis of existing evidence, the retention of staff is a large concern when turnover rates are increasing. Staff retention is increasingly challenging as a closure date nears since it becomes harder for the Tribunal to retain talented and experienced staff. In order to determine more specific drivers of voluntary separations, especially with regard to type of staff and where in the organization the separations are occurring, an analysis of the information obtained from exit interviews, post-exit surveys and current staff surveys may enable a more targeted staff retention intervention rather than the implementation of a system-wide approach.

50. Overall, downsizing did not appear to affect the timeliness of the judicial process significantly, mainly because its effect on the total turnover was marginal. In addition, interviews with senior management and a staff survey corroborated the findings in the 2010 OIOS audit report which indicated that the Tribunal's downsizing strategy was transparent and participatory. The downsizing exercise took into consideration staff and organizational interests to ensure a fair process. Over 65 per cent of surveyed staff members were satisfied with how management communicated the downsizing criteria regardless of post designation. Staff

sentiment towards the overall downsizing approach was mixed, with staff assigned to trial teams reporting the greatest level of satisfaction.

51. By contrast, voluntary separation was identified a key contributor to delays in judicial activities. According to the staff survey, more than 80 per cent of staff deemed voluntary separations to be a major constraint to the timely completion of trial activity. Similarly, on the basis of interviews and semi-annual reports, the Tribunal's senior management believed that the loss of highly experienced and qualified staff with critical skills, as well as the time needed to train new staff to replace them, was one aspect that limited the expeditious completion of cases. Moreover, the Tribunal maintained that low levels of staffing and the relative inexperience of a legal support team for a large and complex case also contributed to delays (see S/2010/270, para. 23).

52. Effective retention management requires an ongoing diagnosis of the nature and causes of staff turnover and a strategic approach to ensuring retention. The Tribunal, in consultation with the Staff Union, employed a wide range of preventive measures to retain staff over the years, which resulted in variable success.[28] Some of the measures included, but were not limited to, a proposal for an International Civil Service Commission-endorsed end-of-service grant that would have provided payment to staff members who remained at the Tribunal until their positions were downsized. The proposal was rejected by the Fifth Committee of the General Assembly despite its acceptance by the Advisory Committee on Administrative and Budgetary Questions. The Tribunal has also developed, sought and implemented non-monetary incentives to retain staff until their services are no longer required. Such measures include training and career development opportunities and an agreement with the Secretariat to have staff in the Professional and higher categories, whose posts had been abolished, to be considered alongside internal candidates at the 30-day mark for vacancies in the Secretariat. Similarly, staff in the General Service and related categories, whose posts had been abolished, would be eligible for vacancies in the those categories at other duty stations. According to the President of the Staff Union, the single-most important retention measure introduced was a widely accepted downsizing plan that gave staff clear expectations as to the dates their posts would be abolished. Despite all the measures employed by the Tribunal mentioned above, the turnover analysis demonstrates that with the exception of 2012, voluntary separations have been increasing steadily over the past five years. The peak was reached in the past biennium (averaging 18.6 per cent). The surge was reflected by a sharp increase in the total turnover rate, which averaged 33.5 per cent in the biennium 2014-2015. Therefore, a number of the retention strategies introduced had a limited effect on voluntary separations.

V. Conclusion

53. The Tribunal is now at a critical juncture in which it is downsizing rapidly and is set to close. It has had to balance resources, deal with voluntary separations, manage operational efficiency and deliver a high standard of justice, all of which

[28] For a comprehensive list, see A/65/616, annex I, and an internal Tribunal briefing paper entitled "Retention in a downsizing institution: the experience of the International Tribunal for the Former Yugoslavia". The text is on file with the Registry of the Tribunal and is available for consultation.

pose great challenges to a downsizing organization. Within the five-year temporal scope of the present evaluation, the Tribunal has made steady progress in its judicial activities according to its own trial and appeals forecasts. It is by no small feat that it now has a 100 per cent enforcement record and is steadily completing the remaining trials and appeals. The Tribunal has maintained a reasonable level of effectiveness amid the challenges posed by voluntary separations and retention, including through the use of rosters, non-monetary staff incentives and the breakdown of specialized work and by making posts cross-functional, where applicable. While the departure of knowledgeable and experienced staff over the years has created uneven lags in some judicial cases over others, the Tribunal has adapted well in delivering results. The Tribunal has always been at the forefront of testing and developing international criminal procedures, and has served as a model for other international courts that are developing their own functions and operations.

54. At the same time, there appears to be a lack of focus on demonstrating performance results in a clear, attributable and measurable manner in the context of the completion strategy that would improve transparency and accountability. The ambiguity in treating the dates for the completion of work as fixed deadlines or flexible targets has afforded the Tribunal some autonomy in setting the pace of its judicial activities. While the logical framework for 2016-2017 does demonstrate a clear intention to improve the articulation of measurable goals, this has not been the case over the course of the past five years. The Tribunal has for the most part focused incrementally on monitoring and implementing its activities rather than on demonstrating results in terms of greater efficiency.

VI. Recommendations

55. The four key recommendations of OIOS to the Tribunal are set out below.

Recommendation 1 (see section IV, result A)

56. **Adopt case process time standards based on the different types of case management approaches and monitor progress towards those internal benchmarks.** The Tribunal should develop a time standard benchmark on the basis of its past cases for best practices and for future ad hoc tribunals since it has demonstrated that it is able to gather sufficient information at the advanced stage of judicial activity to make a reasonably accurate forecasts.

Recommendation 2 (see section IV, result B)

57. **Ensure that planning and monitoring mechanisms are tracking efficiency results.** The Tribunal should document cost-saving and efficiency gains and, as a post-mortem exercise, analyse past trial and appeal cases in order to understand how the scope, size and complexity of cases affect the timeliness of judicial activities, including relative to other judicial institutions.

Recommendation 3 (see section IV, result C)

58. **Develop a code of conduct and disciplinary mechanism for the professional conduct of judges.** The Tribunal should develop a code of conduct that clarifies the role of judges and serves as a check against abuses and mistakes at the Tribunal. It should also create a disciplinary mechanism for the professional

conduct of judges in order to enable staff members of the United Nations to address allegations of misconduct concerning judges.

Recommendation 4 (see section IV, result D)

59. **Develop a centralized information system on staff separations and improve human resources analysis for data-driven decision-making.** The Tribunal should improve its capabilities to retrieve and process data on staff separations by creating a system that also encompasses, among other things, historical statistics and information collected through exit interviews. The database could be leveraged by employing analysis to monitor turnover and identify emerging risks as the Tribunal accelerates downsizing.

Annex I

Comments received from the International Tribunal for the Former Yugoslavia

The Office of Internal Oversight Services (OIOS) presents below the full text of the comments received from the International Tribunal for the Former Yugoslavia on the evaluation results contained in the draft report. This practice has been instituted in line with General Assembly resolution 64/263, following the recommendation of the Independent Audit Advisory Committee.

Memorandum dated 2 May 2016 from the President of the International Tribunal for the Former Yugoslavia

I. Introduction

1. The International Tribunal for the Former Yugoslavia welcomes the mandate given to OIOS to evaluate the efficiency and effectiveness of its methods of work in implementing its completion strategy in the period 2010-2015. The Tribunal takes very seriously the need for efficiency and effectiveness in implementing its completion strategy. A thorough review of the extensive efforts undertaken by the Tribunal towards the completion of its work would allow its experience — both in terms of its best practices and persistent challenges — to be documented and to serve as a lessons-learned tool for future international criminal courts.

2. The Tribunal regrets, however, that OIOS was unable to conduct a meaningful examination, primarily due to the unreasonably short deadline given to undertake its evaluation. Accordingly, the evaluation was limited in its scope and ambition and failed to comprehend or fully address the particular issues that pertain to the Tribunal as a judicial institution.

3. As a result of the evaluation's limited scope and lack of depth, the resulting findings and recommendations have limited utility to the Tribunal, whose mandate will be completed at the end of 2017. Similarly, they have little relevance to other international tribunals in terms of identifying lessons learned that could be of benefit to other judicial institutions. In the Tribunal's view, this represents a missed opportunity to identify working methods that represent best practices in international justice.

4. The Tribunal hopes, however, that the conclusions of this evaluation may form the starting point for a properly resourced, politically neutral and thoroughly considered review of the factors that both assist and impede judicial efficiency in international criminal trials. A more sound and thorough study would assist the cause of international justice more generally. The Tribunal would welcome such a review, but notes that it is not itself resourced to undertake a review in the short time left before its closure.

II. Evaluation scope, framework, purpose and methodology

A. The evaluation terms of reference were limited, leading to partial and incomplete findings

5. The International Tribunal for the Former Yugoslavia regrets that the evaluation was limited in scope to the period 2010-2015. It notes that the

completion strategy was proposed by the Tribunal in 2002 and was endorsed by the Security Council in 2003. Many of the efficiency innovations that the Tribunal put in place occurred in the years prior to 2010 and were therefore excluded from the scope of the evaluation. Similarly excluded were two significant trial judgments delivered in 2016. While the Tribunal understands the need to limit the scope given the tight deadline set by the Security Council, it considers that the arbitrary time frame for the evaluation, as well as the Security Council's request that it take place in the context of resolution 1966 (2010), have unfortunately limited the evaluation to only a partial view of the Tribunal's efforts to increase its effectiveness and efficiency.

6. In addition, the Tribunal regrets that the evaluation began with terms of reference that contained an inherent bias, in which it was noted in paragraph 13 that the "continued inability of the Tribunal to complete its work in a timely manner as set out in the completion strategy". This led the evaluation team to a preconceived conclusion that the Tribunal had been given concrete deadlines, and also reflected a fundamental misunderstanding of the nature of judicial processes. This misunderstanding extends to the evaluation team erroneously tracing the completion strategy back to estimates made by the Prosecutor in 1999 (see A/70/874-S/2016/441, para. 26). The Prosecutor is an independent official and has a mandate to investigate and issue indictments. Unable to speak on the overall judicial process, the Prosecutor's forecast was made with respect to investigations timelines only, not trials and appeals.

7. In the Tribunal's view, the evaluation must therefore be seen as partial and incomplete.

B. The evaluation methodology was rigid and not adapted to the unique features of a judicial institution

8. The methodology of the evaluation is derived from the Regulations and Rules Governing Programme Planning, the Programme, Aspects of the Budget, the Monitoring of Implementation and the Methods of Evaluation (ST/SGB/2000/8). That methodology is set within the context of the United Nations integrated management process, including the medium-term plan, programme budgets, reports on programme performance and evaluation reports (ibid., regulation 2.1). It assesses the results of United Nations programmes against their objectives in the results-based management framework.

9. The results-based management framework has, however, never applied to judicial decision-making. This is for good reason: the fundamental principles governing the process of criminal trials, in particular judicial independence and the right to a fair trial, would be undermined by the imposition of a results-oriented framework. The General Assembly has recognized this, and in its request to the Tribunal to present its budgets in a results-based management format, directed the Tribunal to include only the non-judicial and administrative functions of the Chambers (General Assembly resolution 57/288, para 4(b)).

10. The evaluation, however, applied the usual OIOS methodology without adapting it to take into account the unique nature of the judicial mandate. It therefore attempted to assess the timely completion of judicial activities against the Registry's results-based management framework, even though judicial activities are,

by design, not included. This led to a focus on assessing indicators that were never intended to demonstrate performance of the completion strategy, while missing the results achieved outside the scope of the logical framework.

11. In the Tribunal's view, the evaluation has therefore produced a distorted view of the effectiveness and efficiency of the Tribunal in implementing the completion strategy.

III. Evaluation results

A. Structure, mechanisms, and operational activities to implement the completion strategy

12. The Tribunal is pleased to see that the evaluation team took note of the extensive substantive operational and procedural reforms that took place as part of the completion strategy to complete the judicial workload in an expeditious manner (see A/70/873-S/2016/441, paras. 22-25). The Tribunal agrees with the concluding comment that the Tribunal has always been at the forefront of testing and developing international criminal procedures, and has served as a model for other international courts that are developing their own functions and operations (ibid., para. 54).

13. However, in the Tribunal's view, this section of the report needed to be developed a great deal more, since these substantive operational and procedural reforms were the main element of the completion strategy, and should therefore have been the focus of the evaluation. A focus on examining administrative and support functions distracted the evaluation from these substantive issues, which have significantly more impact on the trial and appeals schedule.

B. Planning and carrying out the Tribunal's case work

Benchmarking effectiveness and efficiency

14. The evaluation notes that the measures of effectiveness and efficiency by which the Tribunal is assessed are largely derived from past performance at the Tribunal itself. It also notes, with reference to international criminal tribunals in general, that there were no available benchmarks or an accepted methodology for assessment of efficiency and effectiveness (ibid., para. 28).

15. The Tribunal acknowledges this point, which is why it is disappointing that OIOS missed the opportunity to suggest benchmarks, or develop a methodology for assessing the efficiency and effectiveness of international criminal tribunals. With over 20 years of operation, the Tribunal's performance prior to reforming its methods of work would have been interesting, relevant, and useful benchmarks to examine. In making this observation, the Tribunal does not intend to criticize OIOS or the evaluation team — it would simply not have been possible, given the limited time and scope available to the evaluation team. Furthermore, developing such benchmarks and methodology has also never been within the mandate or resources of the Tribunal, given the focus to date on completing its work.

16. Nonetheless, the Tribunal considers that the international community has missed an opportunity to adapt the United Nations evaluation methodology to a judicial institution and to undertake a serious analysis of the factors affecting judicial efficiency. The Tribunal hopes that it will be possible to do so in the future and to focus squarely on the actual questions that affect judicial efficiency without becoming distracted by administrative or support issues. This should include, for example, establishing benchmarks for efficiency measures such as the joining of cases, adding courtroom space and holding trials in shifts exceeding normal working hours, allowing the admission of written evidence, imposing time limits on the parties, decreasing the scope and complexity of indictments, and making use of electronic management of evidence and translations.

Monitoring progress towards judicial objectives

17. The Tribunal notes that much attention was devoted to its ability to predict the length of trials and appeals. The main finding appears to be that the accuracy of forecasts for the length of a trial is very high after both prosecution and defence have concluded their cases, and with appeals, once the parties have submitted their briefs. This is not surprising, since the cases move into judgment drafting at that point, where the actions lie mainly within the control of Chambers.

18. The Tribunal assumes that the reasons for focusing on this issue is to support recommendation 1, which is essentially to use the statistical data from old cases to develop time standards for future cases.

Recommendation 1

19. This recommendation is an updated version of a recommendation from a 2008 audit report (AA2008/270/01) that the OIOS undertook of the Tribunal's completion strategy. The Tribunal did not accept the recommendation, stating that "The use of performance standards such as 'average length of trial' is almost meaningless" in comparing one trial to another, due to the multiple complexities and unique factors involved in every case. As with the current exercise, the Tribunal considered that the 2008 recommendation reflected a lack of understanding of court operations.

20. The Tribunal recognizes that the current exercise is an evaluation and not an audit. However, the Tribunal's assessment in 2008 continues to be relevant for this evaluation and its position is unchanged, particularly in view of the minimal number of cases remaining, which already have end-dates for completion and thus do not require benchmarking or time standards. While the Tribunal fully agrees with the intention to document best practices for future ad hoc tribunals, forecasts of trial and appeal length will continue to be unique for each case, and time standards set by the Tribunal would not be applicable to future courts.

Demonstrating results

21. With respect to the finding that the Tribunal's demonstration of results according to a results-based management framework was ambiguous (see A/70/873-S/2016/441, paras. 34 and 35), the Tribunal has already outlined above the fact that judicial activity is excluded from the Tribunal's logical framework. The framework cannot therefore be used to assess progress towards the completion of judicial activity, which the evaluation has attempted to do. This has resulted in a distorted

analysis that is overly focused on administrative and support activity, and not on judicial efficiency.

22. This is not to say that the Tribunal does not have clear and measurable objectives and indicators to measure progress in judicial activity. The judicial operations of the Tribunal, as a criminal court, are strictly governed by a legal framework contained in a set of detailed rules and procedures, including the Tribunal's statute and its rules of procedure and evidence ("rules"). These provide the overarching framework and regulate the outputs of the parties and the Registry that affect the cases and pace of judicial activity from pretrial through trial and appeal. They are further supplemented by Practice Directions and policy documents which, together with judicial orders in specific cases, comprise the Tribunal's regulatory framework. These documents in combination create a strict set of outputs and results that must be met by the Parties and the Registry to keep the judicial process on track.

23. In the pretrial phase, for example, status conferences must be held every 120 days to ensure expeditious preparation for trial (see IT/32/Rev.50, rule 65 bis). The rules provide strict deadlines for disclosure of evidence by the Prosecutor (within 30 days of the initial appearance of the accused) (ibid., rule 66), and for the filing of, as well as the deciding on, preliminary motions (not later than 30 days after disclosure, and within 60 days of filing, respectively) (ibid., rule 72 (A)). They also provide deadlines for the submission of any appeals against decisions on those motions (15 days) (ibid., rule 72 (C)), or any other motion in the course of proceedings (7 days) (ibid., rule 73).

24. Similarly, for appeals against a trial judgment, for example, the rules provide that any notice of appeal should be filed within 30 days of the pronouncement of the judgment (ibid., rule 108), with the Appellant's brief due 75 days thereafter (ibid., rule 111). The Respondent's brief must be filed within a further 40 days and any brief in reply 15 days later.

25. These rules and practice directions in combination provide for the basis of a planning framework for the outputs of the parties where deadlines and results are strictly monitored and unambiguous. Compliance is mandatory and exceptions are only granted after consideration by judicial authority.

26. It is this regulatory framework that drives the pace of judicial activity, the core work of the Tribunal, and hence the pace of completion. Results are easily demonstrated, but they are outside the scope of the results-based management logical framework.

27. In any case, the Tribunal does not agree with the assessment that the logical framework was ambiguous overall. While the evaluation highlights one unclear accomplishment and ambiguous indicator in figure IV of the report (A/70/873-S/2016/441), it fails to acknowledge the many other expected accomplishments and indicators in the logical frameworks of both the Office of the Prosecutor and the Registry that were indeed measurable and clear.

28. Nevertheless, it is pleasing to note that the evaluation describes the improvement in the application of the logical framework to the Registry over the period evaluated, describing how an ambiguous indicator was redrafted to become more specific, and setting out how annual workplans began to follow a results-based management approach from 2014. Even with these improvements, however, the

Tribunal notes that the logical framework still does not extend to judicial activities, and would still not be capable of generating evidence of judicial efficiency.

C. Evidence and accountability

Evidence to demonstrate judicial efficiency

29. The evaluation considered that evidence on demonstrating performance results proved elusive, and there was an absence of clear indicators to enable a transparent assessment of the extent to which the completion of work is on time. This represents a misunderstanding of judicial processes and the fundamental importance of judicial independence. While the right to a fair trial requires the process to be as expeditious as possible (among other factors), judicial independence, the need for judicial deliberations, and the inherent unpredictability of criminal prosecution mean that trials cannot have fixed deadlines. A search for indicators and evidence in this respect will inevitably be fruitless. Confusion in this respect is evident in the conclusion of the report, in which it is incorrectly noted that the "ambiguity in treating the dates for the completion of work as fixed deadlines or flexible targets has afforded the Tribunal some autonomy in setting the pace of its judicial activities" (ibid., para. 55). The Tribunal has, in fact, total autonomy in setting the pace of its judicial activities, and properly so.

30. The primacy of judicial independence and ensuring the right to a fair trial, free of any political influence, is fundamental to the integrity of international courts. It should not be a surprise to any observer of international criminal justice that the Tribunal has maintained a consistent position in response to past audits to reject recommendations that would undermine judicial independence. The evaluation cites the 2008 OIOS audit in pointing out that "Earlier suggestions to foster documentation on efficiencies were ignored by the Tribunal (ibid., para. 36)" The response of the Tribunal at that time is consistent with its response now: the Tribunal agrees that generating such evidence would be useful as a historical review, but it cannot subject judges in ongoing cases to deadlines and targets based on data from historic cases.

31. With all trials and appeals now nearly complete, the Tribunal fully agrees, however, that there would be value in properly evaluating the measures that were put in place, and developing clear evidence to quantify their effects. All of the measures served a common purpose to accelerate the Tribunal's work, and while some gains are self-evident — such as the referral of cases to other jurisdictions, or the holding of seven rather than three trials per day — the effects of others are more difficult to quantify. The Tribunal would welcome the development of a methodology, tailored to a judicial institution, which could assess the relative effectiveness of the different strategies used by the Tribunal to draw lessons for future international tribunals. However, it emphasizes that any such project, if undertaken before the end of 2017, would take time away from the pending cases and would therefore require additional resources in terms of both funding and staffing.

32. Pending the development of such a methodology, the Tribunal notes that some comparative studies have been attempted in academic literature. One such study was relied upon by the evaluation team for its analysis of legal and factual complexity (ibid., para. 18 (g)), but the positive conclusions of that study were left out of the

evaluation, and instead other studies with more ambiguous results are cited. For the record, that study concluded that the "results show that the International Tribunal for the Former Yugoslavia is more efficient than the Special Court for Sierra Leone and approximately as efficient as complex murder trials in the United States ... Although the data is sparse, the International Tribunal for the Former Yugoslavia appears to be much more efficient than its closest domestic comparator — mass atrocity trials."[a] The most recent comparative study of international courts, also not cited in the evaluation, is found in the 2016 edition of the authoritative *Cambridge Companion to International Criminal Law*. It concludes as follows: "With a considerable number of years of practice at the International Criminal Court behind us, it does not go too far to say that the prestige and impressive legacy of the ad hoc tribunals increases with each day. [...] one can indeed raise the question whether it will and can ever get any better than the International Criminal Tribunal for the Former Yugoslavia".[b]

Recommendation 2

33. As set out above, the Tribunal agrees that it would be beneficial to undertake analysis of past trial and appeal cases to better understand how their scope, size and complexity affected judicial timelines.

34. The Tribunal notes, however, that such a study would be time consuming and resource intensive, and the Tribunal is not currently resourced to undertake such analysis, and therefore cannot accept the recommendation. All resources are focused on completing the Tribunal's work by 2017, which must remain the priority.

Code of conduct for judges of the International Tribunal for the Former Yugoslavia

35. The evaluation correctly identifies the lack of a formal mechanism in the Tribunal to ensure the professional conduct of judges (A/70/873-S/2016/441, para. 42). This would have been necessary, as the report concedes, only in limited instances.

36. The Tribunal agrees on the importance of such a document. However, it must be noted that upon the initiative of, and following discussions among, the Tribunal judges, the judges of the Mechanism for International Criminal Tribunals have adopted a code of conduct (MICT/14). Furthermore, following the delivery of the Stanišić and Župljanin appeal judgment, there will only be only one ad litem and two permanent Tribunal judges remaining who are not also Mechanism judges, and therefore not covered by the Mechanism code of conduct.

Recommendation 3

37. The Tribunal agrees in principle with this recommendation, however notes that it would be of marginal relevance at this point in the Tribunal's history. The Mechanism has already established international best practice by adopting its own

[a] Stuart Ford, "Complexity and efficiency at International Criminal Courts", *Emory International Law Review*, vol. 29 (2014).

[b] Göran Sluiter, "Ad hoc international criminal tribunals (Yugoslavia, Rwanda, Sierra Leone)", in *The Cambridge Companion to International Criminal Law*, William A. Schabas, ed. (London, Cambridge University Press, 2016).

Judicial Code of Conduct, which applies to all but a few remaining Tribunal judges. Moreover, the Tribunal emphasizes that the development of any such code of conduct will take crucial time and resources away — particularly in terms of the judges themselves — from the completion of the remaining cases, and therefore cannot accept the recommendation.

D. Voluntary separation and downsizing

Procedural fairness and transparency in the downsizing exercise

38. The Tribunal welcomes the recognition that the downsizing process was fair and transparent, was based on operational requirements, importantly did not contribute to delays in completing judicial casework, and in fact represented "best practice in leadership of a change process."[c] The Tribunal also appreciates that in the report voluntary separations are identified as posing challenges to the completion of judicial activities, which corroborates its own views in this respect, and echoes the regular reports provided to the Security Council. In addition, it welcomes the recognition of the numerous measures undertaken to retain staff. There are, however, serious flaws in analysis, which have led to improper conclusions and the consequent recommendation for action. The issues of most concern are outlined in the following sections.

39. The evaluation states that "Analysing turnover rates is critical to a downsizing organization (A/70/873-S/2016/441, para. 45)." The Tribunal points out, however, that the actual retention of staff is more fundamental than performing analysis. Statistical data analysis can point management to factors that are correlated to attrition trends. However, the direct management of staff — to understand on an individual basis what motivates their choices — is far more powerful in terms of anticipating voluntary departure, and putting in place resilience and capacity where possible. The evaluation overstates the value of statistical analysis and ignores the Tribunal's actual successes obtained from direct knowledge and the responsive actions of managers.

40. There is also an assertion in this section that statistical knowledge of departure trends would inform adjustments to downsizing to compensate for changes in voluntary separations. The assertion seems to indicate that the evaluation team did not understand that the downsizing methodology employed automatically adjusts involuntary separations in response to changing voluntary departures. The Tribunal also notes that the evaluation team relied on odd categorizations of data, possibly leading to unreliable results. In tabulating the data, for example, OIOS included retirement and death-related separations as "voluntary separations" (ibid., para. 47).

Comparator study of limited applicability

41. Even more problematically, the evaluation relies on academic sources and models to support its analysis methods and conclusions that are not comparable or applicable to the Tribunal's situation (ibid., para. 48). The organizations studied in the articles were undergoing reductions in their workforces to reach specified target levels, whereas the Tribunal is undergoing a complete closure: all posts are being

[c] See AA2010/270/04, para. 11 (internal document). The text is on file with the Office of Internal Oversight Services and is available for consultation.

eliminated and all Tribunal staff must separate. The academic sources speak of downsizing "shocks", meaning that the studied organizations implemented sudden and unpredicted reductions of staff. By contrast, as part of its downsizing strategy, the Tribunal linked post downsizings to calendared cessation of judicial activity and notified staff as far as two years in advance of the expected abolishment of their posts, removing the element of arbitrariness and surprise. Given the lack of comparability between the organizations studied and the Tribunal, it is unlikely that the conclusions drawn in the academic studies are fully applicable to the situation under evaluation. Nevertheless, in spite of the questionable applicability, the eventual recommendation emerging from the evaluation exercise relies on the premises used.

42. The basic premise of this part of the evaluation, relying on academic views, is that active human resources practices to increase the perception of institutional fairness, to promote the feeling of "embeddedness" and to promote career development will counteract and moderate voluntary separation.[d] The evaluation further asserts that by using data-driven analysis, the Tribunal could more effectively target these moderating human resources practices to areas that are subject to higher rates of voluntary turnover.

Effective human resources practices already in place

43. The evaluation found that the Tribunal already had excellent practices in terms of the noted moderating human resources management factors, which were applied across the organization. Therefore, the implication that additional benefits could be obtained by a more targeted approach is not supported.

44. Simply put, the evaluation itself finds that the Tribunal is already targeting the entire institution with prescribed best practices to lower staff attrition. It would therefore not be useful to invest the time and resources that would allow the Tribunal to use statistical analysis to finely target parts of the institution with those same practices. The Tribunal already employs practices that are as effective as possible, and without statisticians it has neither the expertise nor the resources to develop and implement complex data-driven management models. Even if it could, the results would not likely be worth the investment in doing so.

Detailed data analysis misses intuitive explanations

45. The Tribunal must also point out that this part of the evaluation suffers from factual inaccuracy as well as confusion between correlation of factors and cause and effect. The evaluation report states that there were no post reductions in the biennium 2012-2013 (ibid., para. 49). The Tribunal explained to OIOS that while no regular posts were downsized, over 160 staffing positions (based on structural general temporary assistance funding) were abolished during that biennium. In addition, 39 positions based on standard general temporary assistance funding were abolished, leading to a total of over 200 abolished positions in the biennium. However, this factual error was not corrected in the final report.

[d] Charlie O. Trevor and Anthony J. Nyberg, "Keeping your headcount when all about you are losing theirs: downsizing, voluntary turnover rates, and the moderating role of HR practices", *Academy of Management Journal*, vol. 51, No. 2 (2008).

46. This error in turn revealed a further flaw in the evaluation approach. The evaluation team focused on actual staffing departure rates, both involuntary and voluntary, and a possible correlation between them, but did not conceive instead that the abolishment of posts/positions could play a role in precipitating attrition by voluntary separation. Missing this point, it did not attempt to see if there was a correlation between the abolishment of posts and attrition. It seems intuitively clear, however, that greater numbers of posts abolished could reasonably be associated with increased separations.

47. Furthermore, the evaluation confuses correlation of studied factors and actual cause and effect, and comes to an unsupported conclusion. In the report, it notes that in 2012, although numbers of staff leaving involuntarily increased, voluntary separations decreased, concluding that higher involuntary separation did not lead to higher voluntary separation, and therefore that "other factors" must have contributed to the decrease in voluntary separation (ibid., para. 49). The way this analysis was performed, and the conclusions reached, belie the unstated hypothesis of the evaluators that there should be a causative link between increasing involuntary separations and the rate of voluntary separations. Not having found any correlation, the evaluators then turn to unspecified "other factors" to explain the results actually found.

48. What is missed here is something that is intuitively clear: with a given number of posts abolished, if there are fewer than sufficient voluntary separations to account for the loss of posts, the organization must then turn to letting staff go, namely, increasing the number of involuntary separations. With its focus on finding out to what extent greater involuntary departures caused more voluntary departures, the evaluation team therefore missed the obvious, a conclusion that does not require detailed statistical analysis. Additionally, having themselves noted that staff retention becomes more difficult as the Tribunal nears its closure date, the evaluation team did not attempt to ascertain to what extent there is a correlation between voluntary departures and impending closure. Based on their own observation that involuntary separations are in general steadily rising over the period reviewed, it seems that there likely is a high degree of correlation. This fits with the intuitive view that as closure looms, staff are increasingly looking for and obtaining employment outside the Tribunal.

49. The related section of the evaluation report concludes by noting that numerous retention measures were employed, but that because the number of voluntary separations has increased, the measures must have only "had a limited effect (ibid., para. 53)". In the face of imminent closure, with no guarantee to staff of continuity of their livelihoods should they remain until the end, it should be clear that no retention measure introduced can be entirely effective. This does not mean, however, that retention measures employed by the Tribunal had no effect. The evaluation fails to assess the effectiveness that the various measures did have, and it does not appreciate the far more negative impact that not introducing the measures would have had. The value of the report would have been substantially increased had it evaluated the efficacy of the various measures employed, rather than coming to the trivial conclusion that their impact was limited.

Recommendation 4

50. While the Tribunal agrees that having such a system could theoretically yield additional insight into trends on separations, it cannot accept recommendation 4.

51. First, the Tribunal rejects the premise that statistical trend analysis is superior to interventions based on specific managerial knowledge of the employment situation of individual staff and the capacities of work teams in anticipating and reacting to threats to retention. Tribunal managers already know which staff are leaving or are likely to leave, and have been taking the most effective measures possible to increase resilience and capacity in the sections to address attrition. Furthermore, the Tribunal has neither the expertise nor the time to conduct detailed data collection and statistical trend analysis. The Tribunal is tightly focused on completing the substantive judicial activity that comprises its mandate, and such an exercise would distract from that focus and unnecessarily consume time and resources. Finally, system development is time-consuming, and in the light of the limited time remaining and the lack of dedicated resources to accomplish this development, it is likely that the Tribunal would have closed before such work was completed.

IV. Conclusion

52. The International Tribunal for the Former Yugoslavia would like to thank the evaluators for their cooperation in undertaking this evaluation, and their willingness to work as swiftly as possible despite the resource and timing constraints and to provide the Tribunal with adequate time to provide its views. OIOS was able to take into account much of the input provided by the Tribunal, and the evaluation was undertaken in a professional and collegial manner.

53. The constraints on this evaluation that have limited the quality and usefulness of its findings were for the most part not attributable to OIOS. The Tribunal recommends that future reviews be allowed sufficient time to undertake full research based on a methodology that is properly focused on substantive issues and takes into account the unique nature of the institution, its judicial mandate and external challenges outside its control.

54. Regardless, the Tribunal can assure OIOS and the Security Council that it will continue to give full consideration to the OIOS report.

Annex II

Comments by the Office of Internal Oversight Services, Inspection and Evaluation Division

The Office of Internal Oversight Services (OIOS) expresses its thanks to the International Tribunal for the Former Yugoslavia for its thoughtful and thorough response to the evaluation report and acknowledges the concerns the Tribunal expressed on the scope and issues that could not be covered on account of the short deadline and word limit. In its report, OIOS focused on the efficiency and effectiveness of judicial activities in a downsizing institution, within the context of the completion strategy, a substantive area with multiple cross-cutting issues.

The Tribunal has rejected all four recommendations on the basis of a lack of time, resources and the perception of limited value for its mandate. The recommendations in the report took into consideration the Tribunal's intention to complete its work by the end of 2017, the overall level of capacity and the remaining resources, with a view to increasing transparency and accountability in performance reporting.

OIOS maintains that recommendations 2 and 4 would not impose a considerable constraint on the Tribunal since not only does the information readily exist but it would also only require basic collection and organization. Since a code of conduct for judges is in place in the International Residual Mechanism for Criminal Tribunals, producing a similar document for the Tribunal, as proposed in recommendation 3, would not be a burden on capacity. Recommendation 1, while relatively more intensive than the rest, would reflect a commitment to the timely completion of cases according to their own pace in judicial activities, enable a transparent measure of management effectiveness and efficiency and provide a clearer assessment of Tribunal resource needs. However, it is not appropriate for OIOS to suggest benchmarks for the Tribunal as such an attempt would infringe upon its judicial independence.

OIOS disagrees that the time frame for the evaluation was arbitrary. As Security Council resolution 2256 (2015) and General Assembly resolution 70/227 contain mandates for an evaluation in the context of Council resolution 1966 (2010), and the most recent OIOS audit on the Tribunal completion strategy was undertaken in 2010, OIOS selected the five-year interval period of 2010-2015 to encompass the evolution of the methods and work of the Tribunal since the first date of completion of work, followed by the revised date of completion of work, up to the end of 2015 in order to observe the process of change. OIOS also determined that the time frame was reasonable given the period of short duration in which to produce the report. Concerning the Tribunal assertion that key pre-2010 efficiency innovations were excluded owing to the temporal scope, OIOS provided a number of occasions where such types of substantive innovation efficiencies could be collected and ascertained even though they did not fit in the 2010-2015 scope, including the semi-structured interviews, staff surveys, and in the collection of policy documents and reports. Therefore, the evaluation report provides a clear assessment of the amount of evidence on judicial efficiencies.

Concerning the assertion by the Tribunal of inherent bias in the terms of reference with the phrase "continued inability of the Tribunal to complete its work in a timely manner set out in the completion strategy," OIOS considers this a factual

statement that takes into consideration the date for completion of work articulated in Security Council resolutions 1534 (2004) and 1966 (2010) and the lack of ability to meet them. The report has made a concerted effort to explain the different reasons as to why the dates were missed, and hopes to contribute to clarifying the tension between the notion of deadlines and targets, as noted in paragraphs 26, 27 and 31.

OIOS disagrees with the assertion made by the Tribunal that it erroneously traced the completion strategy back to estimates made by the Office of the Prosecutor in 1999, since the 1999 report of the Panel of Experts, in paragraph 30, supports this statement.

OIOS also disagrees with the Tribunal comments on voluntary separations and downsizing, as it highlights misleading assertions through an excessive focus and criticism of statistical analysis and methodology. The basic point on voluntary separations and downsizing is to fill the gap in the ability to leverage disparate, existing information in the Tribunal by creating an organized centralized database system to facilitate accessibility, improve analysis and thereby make more informed decisions on downsizing, voluntary separations and staff retention, rather than to impose a specific methodological approach.

Three clarifications should be made to redress erroneous statements raised in the formal comments. First, the inclusion of retirement and death-related separations as part of voluntary separations was a methodological choice since such conditions for departure were not deliberately pursued by the management of the Tribunal. Overall, there were only two deaths and 54 retirements, out of a total of 1,131 staff in the period between 2010 and 2015. Given their relatively low incidence, even if such types of separations were excluded, the effect on the final voluntary turnover rate would be nominal. Second, the study highlighted in paragraph 42 of the formal comments was never intended to be a comparator; rather, it was cited as an example within a cohort of studies on how human resource management can mitigate the spillover effect of downsizing on voluntary separations. Third, the Tribunal erroneously pointed out a factual inaccuracy in paragraph 46 of the formal comments. To reiterate, the report discussed proposed post reductions in the biennium 2012-2013 but not actual post reductions, contrary to what was claimed by the Tribunal. Moreover, the staffing figures indicated in paragraph 46 were inconsistent with accepted cross-checked data provided by the Tribunal. No further elaboration was provided on this discrepancy when the opportunity was presented.

Throughout the evaluation process, OIOS provided every opportunity for the Tribunal to produce evidence of its performance results even if it did not strictly conform to a results-based management framework. In doing so, OIOS acknowledged the unique nature of the judicial mandate and external challenges faced by the Tribunal in completing its judicial activities. Where evidence was lacking, OIOS collected primary data and conducted analysis, at times in cooperation with Tribunal staff, in order to better understand the nature of its work.